

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARY BERGER-ROYALS,)	
)	
Plaintiff,)	
)	
v.)	No. 11 C 4678
)	
THOMAS J. DART, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Sheriff Thomas Dart and Sheriff's Lieutenant Kelly Baker have filed their Answer, including affirmative defenses ("ADs"), to the Complaint brought against them and two "John Doe" officers by Mary Berger-Royals ("Berger-Royals"). This memorandum order is issued sua sponte because some aspects of that responsive pleading are clearly problematic.

To begin with, Answer ¶7 is garbled so as to read in a meaningless fashion (obviously an inadvertent error). That paragraph is stricken, but with leave granted to file an amended answer to Complaint ¶7 on or before September 20, 2011 to cure the problem.

Next, as is too often encountered in pleadings authored by counsel in the State's Attorney's Office, the asserted ADs fail to conform to the standards established by Fed. R. Civ. P. ("Rule") 8(c) and the caselaw applying that Rule (and see App'x ¶5 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 279 (N.D. Ill. 2001)). Here are the problems that this Court has

noted:¹

1. AD 1 is inconsistent with the principle that such affirmative defenses must accept a plaintiff's allegations as truthful, while explaining why a defendant may nonetheless be free from liability. That AD is accordingly stricken.

2. AD 2 is a nonfocused statement as to the effect of one portion of the Illinois Tort Immunity Act. Once again, with the allegations of the Complaint being accepted as true (in this instance that specifically includes Complaint ¶40 in the Complaint's one state-law claim), the AD is at odds with that concept and is therefore stricken as well.



Milton I. Shadur
Senior United States District Judge

Date: September 13, 2011

¹ Both with respect to the Answer and the ADs, Berger-Royals' counsel may consider that there are other problems with the present responsive pleading. This memorandum order is of course without prejudice to counsel's right to advance any other contentions on behalf of their client.